

**June 28, 2006**

**DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY**

**Appeal**

Name of Petitioner: Judicial Watch, Inc.

Date of Filing: May 25, 2006

Case Number: TFA-0162

On May 25, 2006, Judicial Watch, Inc. (Judicial Watch) filed an appeal from a determination issued to it on February 3, 2006 by the Department of Energy's (DOE) Freedom of Information and Privacy Act Group (FOI). In that determination, FOI responded to a request for documents Judicial Watch submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. FOI determined that it could locate no documents responsive to Judicial Watch's request. This appeal, if granted, would require FOI to perform an additional search and either release any responsive documents or issue a new determination justifying the withholding of those documents.

**I. Background**

In a letter dated March 9, 2006, Judicial Watch requested documents related to the following:

- (1) The decision to conduct a 30-day investigation and/or review of the acquisition of London-based Doncasters Group, Ltd., by Dubai International Capital (DIC) of Dubai, United Arab Emirates ("UAE");
- (2) The decision to conduct a 45-day investigation and/or review of the acquisition of London-based Doncasters Group, Ltd., by DIC of Dubai, UAE as required or allowed by statute;
- (3) Contracts obtained by DIC through its acquisition of Doncasters Group, Ltd., to manage and/or control and/or operate plants in Georgia and/or Massachusetts and/or Connecticut that make precision components used in engines for military aircraft and tanks.

Letter from Judicial Watch to Abel Lopez, Director, DOE FOIA/PA Division (FOI) (March 9, 2006). FOI forwarded the request to two offices it believed may have responsive documents, the Office of General Counsel (GC) and the Office of Policy and International Affairs (PIA). In its determination letter, FOI determined it did not locate any records responsive to Judicial Watch's request. Letter from Abel Lopez to Judicial Watch (April 18, 2006) (Determination Letter).

In its appeal, Judicial Watch challenges the adequacy of the searches performed by GC and PIA for responsive documents. In support of its argument, Judicial Watch states that DOE participated in the review process for a prior acquisition involving similar companies and that "it is highly likely that the DOE was consulted again on a similar matter which impact [sic] national security, in the case of the DIC acquisition of Doncasters." Letter from Judicial Watch to OHA (May 24, 2006) (Appeal Letter).

## II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. United States Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. United States Department of State*, 779 F.2d 1378, 1384-85 (8<sup>th</sup> Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Ms. Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

In reviewing this appeal, we contacted both GC and PIA to ascertain the scope of the searches for responsive documents. GC informed us that it did not provide any legal support to any DOE element regarding the matter at issue and, consequently, generated no documents pertaining to this case. *See* Electronic Mail Message from Samuel Bradley, GC, to Diane DeMoura, OHA (June 2, 2006). PIA informed us that DOE did not participate in any review involving DIC's acquisition of Doncasters Group, Ltd. Consequently, it generated no documents regarding that case. *See* Memorandum of Telephone Conversation between Edward Rossi, PIA, and Diane DeMoura, OHA (June 21, 2006).

Based on the foregoing information, we find that searches by GC and PIA were calculated to uncover documents responsive to Judicial Watch's request and were therefore adequate. GC knew that it did not provide legal support to any DOE element in this case and, therefore, generated no documents. PIA had definitive knowledge that DOE neither was asked to participate, nor did participate, in the review process for the acquisition of Doncasters Group Ltd. by DIC. As a result, PIA generated no documents relating to any such review. Consequently, no further search was undertaken since documents were known not to exist. Had DOE participated in the review process, then one might expect that PIA or GC would have generated documents regarding that review. In such a case, a more exhaustive search would be required. In this case, however, PIA and GC were not required to undertake a search for documents they knew with a certainty did not exist. We are not persuaded by Judicial Watch's argument that DOE likely participated in the review process because it had previously

participated in a similar review. The fact that DOE may have participated in the review process in a prior acquisition involving two similar companies does not, by definition, mean that DOE participated in the review process of the acquisition at issue in this case. Accordingly, the search was adequate and, therefore, Judicial Watch's appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed on May 25, 2006 by Judicial Watch, Inc., OHA Case No. TFA-0162, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: June 28, 2006